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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/766,016

01/29/2004

Melanie Chopart

016800-626

2670

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7590

06/23/2006

BUCHANAN INGERSOLL PC  
(INCLUDING BURNS, DOANE, SWECKER & MATHIS)  
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EXAMINER

LILLING, HERBERT J

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/766,016

Applicant(s)

CHOPART ET AL.

Examiner

HERBERT J. LILLING

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Jan 29, 2004(IDS); 8/11/04(Prel. Amd).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-47 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

1. Receipt is acknowledged of the prior art information disclosure filed January 29, 2004 and preliminary amendment filed August 11, 2004.

2. Claims 1-47 are present in this instant application.

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-16 and 44, drawn to a method for preparing a reconstructed epidermis/skin equivalent from a culture medium, classified in class 435, subclass 371.

II. Claims 17 and 43, drawn to a second different method directed to a method of applying a composition which comprises lipid lamellar vesicles onto the face surface, classified in classes 424 and 514, subclass 401 and 627.

III. Claims 18-39, drawn to a composition comprising a dispersion, in an external aqueous phase, of vesicles which comprise lipid lamellar phases separated from each other by hydrophilic layers, said lamellar phases comprising at least one amphiphilic lipid and at least one ceramide 7 and/or 5.5, classified in Class 424, subclass 450.

IV. Claims 40-42, drawn to a third method which is for treating epidermis, atopic skin or skin of humans by applying a composition, classified in Classes 424 and 514, subclasses 63 and 887.

V. Claims 45-47, drawn to epidermis/skin equivalent comprising formula I classified in Class 514, subclass 627.

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4. Invention V does not require the specifics of any of Inventions I-IV. Invention I is drawn to a different method than that of Invention II or IV. Invention II does not further limit that of Invention I since it is drawn to a different method and invention. A search and examination of the multiple inventions would be a serious burden on this Examiner because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, the inventions require a different field of search (see MPEP § 808.02), and have acquired a separate status in the art because of their recognized divergent subject matter, thus restriction for examination purposes as indicated is proper.

5. Claims 1-44 are generic to patentably distinct species and Applicant is required, if appropriate to the elected invention III containing claims 24-20 or any claims containing a lipid to elect one single species from each of the above claims; Applicant is required also to elect one single species of Claim 37 drawn to an additional compound for improving the barrier function; Applicant is required to elect one single species of a bioactive agent submitted in claim 38; and Applicant is required to elect one single species of Claim 39. In any of the above, applicant can elect a species that may include two or more species as the elected mixture.

It is further noted that any elected Invention, Applicant is required to elect the species for lipids, compound for improving barrier function, a bioactive agent and additional adjuncts at this time for the elected invention.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

6. Applicant is advised that the reply to this requirement to be complete must include

**(i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143)**

**and**

**(ii) identification of the claims encompassing the elected invention.**

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

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Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103 (a) of the other invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

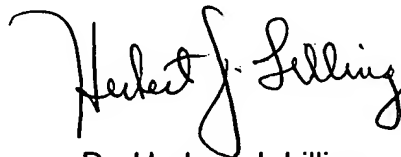
8. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Examiner Lilling whose telephone number is 571-272-0918** and **Fax Number** is (703) 872-9306 or SPE Michael Wityshyn whose telephone number is 571-272-0926. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Information regarding the status of an application may be obtained from the Patent Application information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H.J.Lilling: HJL  
(571) 272-0918  
Art Unit 1651  
June 19, 2006

A handwritten signature in black ink, reading "Herbert J. Lilling". The signature is written in a cursive style with a large, stylized "H" and "L".

Dr. Herbert J. Lilling  
Primary Examiner  
Group 1600 Art Unit 1651